

PLAN AMENDMENTS NOT REQUIRED UNTIL  
JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

**§ 1446. Withholding of tax on foreign partners' share of effectively connected income**

**(a) General rule**

If—

(1) a partnership has effectively connected taxable income for any taxable year, and

(2) any portion of such income is allocable under section 704 to a foreign partner,

such partnership shall pay a withholding tax under this section at such time and in such manner as the Secretary shall by regulations prescribe.

**(b) Amount of withholding tax**

**(1) In general**

The amount of the withholding tax payable by any partnership under subsection (a) shall be equal to the applicable percentage of the effectively connected taxable income of the partnership which is allocable under section 704 to foreign partners.

**(2) Applicable percentage**

For purposes of paragraph (1), the term “applicable percentage” means—

(A) the highest rate of tax specified in section 1 in the case of the portion of the effectively connected taxable income which is allocable under section 704 to foreign partners who are not corporations, and

(B) the highest rate of tax specified in section 11(b) in the case of the portion of the effectively connected taxable income which is allocable under section 704 to foreign partners which are corporations.

**(c) Effectively connected taxable income**

For purposes of this section, the term “effectively connected taxable income” means the taxable income of the partnership which is effectively connected (or treated as effectively connected) with the conduct of a trade or business in the United States computed with the following adjustments:

(1) Paragraph (1) of section 703(a) shall not apply.

(2) The partnership shall be allowed a deduction for depletion with respect to oil and gas wells but the amount of such deduction shall be determined without regard to sections 613 and 613A.

(3) There shall not be taken into account any item of income, gain, loss, or deduction to the extent allocable under section 704 to any partner who is not a foreign partner.

**(d) Treatment of foreign partners**

**(1) Allowance of credit**

Each foreign partner of a partnership shall be allowed a credit under section 33 for such

partner's share of the withholding tax paid by the partnership under this section. Such credit shall be allowed for the partner's taxable year in which (or with which) the partnership taxable year (for which such tax was paid) ends.

**(2) Credit treated as distributed to partner**

Except as provided in regulations, a foreign partner's share of any withholding tax paid by the partnership under this section shall be treated as distributed to such partner by such partnership on the earlier of—

(A) the day on which such tax was paid by the partnership, or

(B) the last day of the partnership's taxable year for which such tax was paid.

**(e) Foreign partner**

For purposes of this section, the term “foreign partner” means any partner who is not a United States person.

**(f) Special rules for withholding on dispositions of partnership interests**

**(1) In general**

Except as provided in this subsection, if any portion of the gain (if any) on any disposition of an interest in a partnership would be treated under section 864(c)(8) as effectively connected with the conduct of a trade or business within the United States, the transferee shall be required to deduct and withhold a tax equal to 10 percent of the amount realized on the disposition.

**(2) Exception if nonforeign affidavit furnished**

**(A) In general**

No person shall be required to deduct and withhold any amount under paragraph (1) with respect to any disposition if the transferor furnishes to the transferee an affidavit by the transferor stating, under penalty of perjury, the transferor's United States taxpayer identification number and that the transferor is not a foreign person.

**(B) False affidavit**

Subparagraph (A) shall not apply to any disposition if—

(i) the transferee has actual knowledge that the affidavit is false, or the transferee receives a notice (as described in section 1445(d)) from a transferor's agent or transferee's agent that such affidavit or statement is false, or

(ii) the Secretary by regulations requires the transferee to furnish a copy of such affidavit or statement to the Secretary and the transferee fails to furnish a copy of such affidavit or statement to the Secretary at such time and in such manner as required by such regulations.

**(C) Rules for agents**

The rules of section 1445(d) shall apply to a transferor's agent or transferee's agent with respect to any affidavit described in subparagraph (A) in the same manner as such rules apply with respect to the disposition of a United States real property interest under such section.

### (3) Authority of Secretary to prescribe reduced amount

At the request of the transferor or transferee, the Secretary may prescribe a reduced amount to be withheld under this section if the Secretary determines that to substitute such reduced amount will not jeopardize the collection of the tax imposed under this title with respect to gain treated under section 864(c)(8) as effectively connected with the conduct of a trade or business within the United States.

### (4) Partnership to withhold amounts not withheld by the transferee

If a transferee fails to withhold any amount required to be withheld under paragraph (1), the partnership shall be required to deduct and withhold from distributions to the transferee a tax in an amount equal to the amount the transferee failed to withhold (plus interest under this title on such amount).

### (5) Definitions

Any term used in this subsection which is also used under section 1445 shall have the same meaning as when used in such section.

### (6) Regulations

The Secretary shall prescribe such regulations or other guidance as may be necessary to carry out the purposes of this subsection, including regulations providing for exceptions from the provisions of this subsection.

### (g) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section, including—

(1) regulations providing for the application of this section in the case of publicly traded partnerships, and

(2) regulations providing—

(A) that, for purposes of section 6655, the withholding tax imposed under this section shall be treated as a tax imposed by section 11 and any partnership required to pay such tax shall be treated as a corporation, and

(B) appropriate adjustments in applying section 6655 with respect to such withholding tax.

(Added Pub. L. 99-514, title XII, § 1246(a), Oct. 22, 1986, 100 Stat. 2582; amended Pub. L. 100-647, title I, § 1012(s)(1)(A), Nov. 10, 1988, 102 Stat. 3526; Pub. L. 101-239, title VII, § 7811(i)(6), Dec. 19, 1989, 103 Stat. 2410; Pub. L. 115-97, title I, §§ 13001(b)(3)(D), 13501(b), Dec. 22, 2017, 131 Stat. 2098, 2139; Pub. L. 115-141, div. U, title IV, § 401(a)(199), Mar. 23, 2018, 132 Stat. 1193.)

#### AMENDMENTS

2018—Pub. L. 115-141 substituted “Withholding of tax” for “Withholding tax” in section catchline.

2017—Subsec. (b)(2)(B). Pub. L. 115-97, § 13001(b)(3)(D), substituted “section 11(b)” for “section 11(b)(1)”.

Subsecs. (f), (g). Pub. L. 115-97, § 13501(b), added subsec. (f) and redesignated former subsec. (f) as (g).

1989—Subsec. (b)(2)(B). Pub. L. 101-239, § 7811(i)(6)(A), substituted “section 11(b)(1)” for “section 11(b)”.

Subsec. (d)(2). Pub. L. 101-239, § 7811(i)(6)(B), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “A foreign partner’s share of any withholding tax paid by the partnership under this section shall be

treated as distributed to such partner by such partnership on the last day of the partnership’s taxable year (for which such tax was paid).”

Subsec. (f). Pub. L. 101-239, § 7811(i)(6)(C), amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: “The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section, including regulations providing for the application of this section in the case of publicly traded partnerships.”

1988—Pub. L. 100-647 amended section generally, substituting provisions relating to withholding tax on foreign partners’ share of effectively connected income for provisions which related to withholding tax on amounts paid by partnerships to foreign partners.

#### EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by section 13001(b)(3)(D) of Pub. L. 115-97 applicable to distributions made after Dec. 31, 2017, see section 13001(c)(2) of Pub. L. 115-97, set out as a note under section 11 of this title.

Pub. L. 115-97, title I, § 13501(c)(2), Dec. 22, 2017, 131 Stat. 2141, provided that: “The amendment made by subsection (b) [amending this section] shall apply to sales, exchanges, and dispositions after December 31, 2017.”

#### EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, to which such amendment relates, see section 7817 of Pub. L. 101-239, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-647, title I, § 1012(s)(1)(D), Nov. 10, 1988, 102 Stat. 3527, provided that: “The amendments made by this paragraph [amending sections 1446 and 6401 of this title] shall apply to taxable years beginning after December 31, 1987. No amount shall be required to be deducted and withheld under section 1446 of the 1986 Code (as in effect before the amendment made by subparagraph (A)).”

#### EFFECTIVE DATE

Pub. L. 99-514, title XII, § 1246(d), Oct. 22, 1986, 100 Stat. 2583, provided that: “The amendment made by this section [enacting this section and amending section 6401 of this title] shall apply to distributions after December 31, 1987 (or, if earlier, the effective date (which shall not be earlier than January 1, 1987) of the initial regulations issued under section 1446 of the Internal Revenue Code of 1986 as added by this section).”

### Subchapter B—Application of Withholding Provisions

Sec.	
1461.	Liability for withheld tax.
1462.	Withheld tax as credit to recipient of income.
1463.	Tax paid by recipient of income.
1464.	Refunds and credits with respect to withheld tax.
[1465.	Repealed.]

#### PRIOR PROVISIONS

A prior subchapter B, consisting of section 1451, acts Aug. 16, 1954, ch. 736, 68A Stat. 359; Oct. 4, 1976, Pub. L. 94-455, title XIX, § 1906(b)(13)(A), 90 Stat. 1834, related to tax-free covenant bonds, prior to repeal by Pub. L. 98-369, div. A, title IV, § 474(r)(29)(A), July 18, 1984, 98 Stat. 844, which repeal was not applicable with respect to obligations issued before Jan. 1, 1984, pursuant to section 475(b) of Pub. L. 98-369, set out as an Effective Date of 1984 Amendment note under section 33 of this title.

#### AMENDMENTS

1986—Pub. L. 99-514, title XVIII, § 1899A(73), Oct. 22, 1986, 100 Stat. 2963, substituted “Liability for withheld